IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 122 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJRAT

Versus

MANAJI KODARJI PARMAR

Appearance:

1. Criminal Appeal No. 122 of 1986

MR LR PUJARI APP for appellant No. 1 - State

MR VIJAY H PATEL for Respondent No. 1-3

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 12/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. This appeal which is filed under Section 378 of the Code of Criminal Procedure, 1973 ('the Code' for short) is directed against the judgment and order dated August 31, 1985 rendered by learned Additional Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No. 12 of 1985 by which respondents/accused who came to be tried on the accusation that on December 26, 1984 accused No.1 caused voluntary hurt to deceased whereas all the accused assaulted him and accused No.2 with an intention to cause the death of deceased forcibly thrown him in the river Hathmati and then pressed him in the water so as to drown him in the water and thereby have committed the offence of murder under Sections 323, 352 and 302 of the Indian Penal Code ('IPC' for short), came to be acquitted.

2. The facts of the case have been detailed in the judgment of the learned Additional Sessions Judge, therefore, it is not expedient to repeat the same all over again in verbatim and in detail in this judgment. However, basic facts which are required to be discussed in this appeal are that:

2.1. On 26.12.1984 at 5 P.M. Police Patel of village Chandrani conveyed a message through telephone to the Police Station Officer, Himatnagar with regard to death of Kantibhai by drowning him in Hathmati river. It was also conveyed in the said message that his dead-body was fished out of the river and was kept on the bank of the river. It was also conveyed therein that when the deceased was drowned in the river, four persons named Kachraji Revaji, Khanaji Revaji, Dhulaji Manaji and Navalji Kadvaji were with him and they informed the village people about the drowning of deceased Kantibhai in the river Hatmati. The said telephonic message was registered as Accidental Death Case No.14 of 1984 in the said police station.

2.2. On receipt of the said message, Head Constable started investigation. Since it was night, dead-body of Kantibhai was kept at the bank of the river under watch. On the next day, inquest panchnama was prepared and the dead-body was sent for autopsy to Himatnagar Civil Hospital. Thereafter statements of witnesses were recorded. Statement of Kailasben Dhulaji who claims to be an eye witness was also recorded. She stated that while she was going to the field for giving lunch, she heard the quarrel, therefore, she went to the scene of the incident where one Jenaji Menaji, child witness, who was grazing goats on the bank of the river was also present. She found that distilling of country liquor was

going on at that place and all the three accused were giving fist blows to the deceased. Accused No.1 gave blow with a log of wood on the back of deceased and thereafter all the three accused pushed the deceased to the river and thereafter accused No.2 pressed him under the water by riding over him. The accused thereafter broke the country liquor distillery and run away from the scene of occurrence. The aforesaid incident was seen by Kailasben and the child witness Jenaji Manaji who was grazing goats.

2.3. It is further case of the prosecution that thereafter Kailasben told the said incident to her sister-in-law Sajjanben and also to Maniben, mother of the deceased. On the basis of the aforesaid statement of the two eye witnesses, head constable lodged the complaint at Himatnagar Police station for the commission of the murder as well as causing hurt and assaults to the deceased which was registered by Police Sub Inspector and thereafter he started investigation of the offence of murder.

2.4. During the course of investigation, PSI prepared panchnama of the scene of offence, recovered the instruments used for the manufacturing of country liquor, recorded statement of Jenaji Manaji and Sajjanben Kalaji and during the course of investigation offence was divulged for commission of murder against the accused and therefore he arrested all the accused. On receipt of the viscera from the medical officer, he sent the same to the chemical analyzer alongwith the cloth of the deceased. Thereafter he handed over the investigation to another PSI who filed charge-sheet against the accused for commission of offence of murder of Kantibhai and for causing hurt and assault to him punishable under sections 323, 352 and 302 of the IPC in the Court of the learned Chief Judicial Magistrate, Sabarkantha at Himatnagar.

2.5. On committal, the learned Additional Sessions Judge, Sabarkantha at Himatnagar framed charge against all the accused for commission of the offence punishable under Sections 323, 352 and 302 of the IPC which was read over and explained to them to which they pleaded not guilty and claimed to be tried and thereupon the accused were tried by the learned Additional Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No. 12 of 1985.

2.6. In order to bring home the charge leveled against the respondents/accused, prosecution has examined ten witnesses including two eye witnesses and placed reliance

on several documents, panchnama of the scene of offence, inquest panchnama, panchnama of the cloths of deceased and arrest panchnama of the accused.

2.7. The learned Additional Sessions Judge on analysis, appreciation, evaluation and scrutiny of the evidence on record came to the conclusion that the deceased died an unnatural death by drowning in the river Hatmati. However, in the facts and circumstances of the case, he did not agree with the prosecution case that the deceased died a homicidal death more particularly in view of expert evidence of Dr. Naresh Patel who performed autopsy as according to the doctor, there were injuries of abrasions and one contusion on the dead-body and therefore the story put up by the prosecution that the deceased was beaten by accused No.1 with a log of wood is unbelievable and the prosecution has failed to prove that the deceased died a homicidal death.

2.8. The learned Additional Sessions Judge further held that the evidence of so-called eye witnesses i.e., Kailasben and the child witness Jenaji Manaji cannot be believed as they are chance witnesses and the deceased was a relative of Kailasben and therefore she is a got up witness. On the basis of the aforesaid finding recorded by the learned Additional Sessions Judge, it was held by him that the prosecution has failed to establish the charge levelled against the accused beyond doubt and therefore he acquitted all the accused of the offence with which they were charged which has given rise to the present appeal at the instance of the appellant/ State of Gujarat.

3. Mr. L.R. Pujari, learned APP for the appellant/ State of Gujarat has vehemently criticized the impugned judgment and order of acquittal. He has taken us through the prosecution evidence more particularly through the evidence of the two eye witnesses whose evidence, according to him, is cogent, consistent and sufficient enough to connect the accused with the crime alleged against them. According to him, there is no contradiction in their evidence and their evidence is consistent and in consonance with their previous statement recorded during the course of investigation. According to him, the learned trial Judge has misread the evidence by saying that the eye witnesses are chance witnesses and the deceased was a relative of Kailasben. It is a cardinal principle of appreciation of evidence that merely on the ground that the witness is related to the deceased his oral testimony cannot be discarded. On the aforesaid premises Mr. Pujari, learned A.P.P. urged

that the impugned judgment and order recorded by the learned Additional Sessions Judge acquitting the respondents is bad in law as it is recorded by discarding the evidence of natural and independent eye witnesses and hence the impugned judgment and order is required to be interfered with at the hands of this Court in exercise of powers under section 378 of the Code. He therefore urged to allow this appeal by quashing and setting aside the judgment and order of acquittal and by recording conviction, the respondents may be dealt with in accordance with law by sentencing them.

4. Mr. V. H. Patel, learned advocate for the respondents/accused supported the judgment and order of the learned trial Judge through out. According to him, there is no evidence worth the name to consider as the evidence of the so-called eye witnesses suffers from serious infirmities as they are chance witnesses and their presence at the scene of occurrence was very much doubtful. If really they had witnessed the incident they would have immediately lodged complaint in the police station but instead of doing so they sat silent till the message about the unnatural death of deceased Kantibhai was conveyed to the police station which was registered as an Accidental Death Case. It is also contended by him that the learned trial Judge has very rightly held that the prosecution has failed to establish that the deceased died homicidal death as no injury was found on the dead-body of the deceased as alleged in the complaint. On the dead-body fished out from the river there were several abrasions and one contusion which were possible while fishing out the dead-body from the river and therefore according to him, the learned trial Judge has given cogent reasons for acquitting them which does not warrant any interference at the hands of this court in view of the principles enunciated by the Supreme Court in respect of acquittal appeal. He, therefore, urged that the acquittal appeal being devoid of any merit deserves to be dismissed and accordingly it may be dismissed.

5. At the outset it may be mentioned that there is no dispute about the unnatural death of Kantibhai by drowning in the water of river Hathmati. However, the defence has seriously assailed that the deceased died homicidal death. To prove the said fact, prosecution has placed reliance on the oral evidence of P.W.7, Dr. Naresh Joitaram Patel, Ex.23, who performed the autopsy. The doctor has admitted in his oral testimony that the injuries found on the dead-body of Kantibhai were possible while the dead-body was fished out of the water as in the river there were brambles.

6. We have minutely scrutinised the evidence of Dr. Naresh Patel and we are also of the opinion that the finding recorded by the learned trial Judge in that regard is consistent with the oral evidence of Dr. Naresh Patel. Therefore, we are in full agreement with the finding recorded by the trial Judge that the deceased did not die homicidal death.

7. Besides this, the prosecution has also placed reliance on the oral testimony of two eye witnesses P.W.1 Kailasben Ex.14 and P.W.2 child witness Jenaji Menaji Ex.15. On close scrutiny of their evidence, we agree with the finding recorded by the learned trial Judge that they are chance witnesses. Their presence at the scene of occurrence was very much doubtful. Apart from this Kailasben being a relative of the deceased, no credence can be given to her oral testimony. It is also required to be noted that if Kailasben had seen the incident she would have immediately reported the said incident to the police station or to some of her nearest relatives as according to her she was present there throughout till the dead-body was fished out from the river. It is the case of the prosecution that she had informed about the said incident to Maniben, mother of the deceased. The prosecution has not examined Maniben. It is also required to be appreciated that the said incident was first reported by Police Patel which was registered as Accidental Death Case No.12 of 1985. In the said message it was inter alia stated that deceased was accompanied by four persons. Out of these four persons, three are accused persons. It was the bounden duty of the prosecution to through light as to who was the fourth person. However, statement of that person was not recorded. Had his statement been recorded and had he been examined, he would have thrown better light into the facts of the case. Instead of that, prosecution is silent on this aspect.

8. On the conclusion as above, we are of the opinion that the learned trial Judge has very rightly appreciated the evidence led by the prosecution and reached a just and correct conclusion which does not warrant any interference at the hands this Court. On the contrary, it requires our confirmation when we are in full agreement with the reasons and conclusions arrived at by the learned trial Judge.

9. Moreover, this is an acquittal appeal in which court should be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the

root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the learned trial Judge. As this Court is in general agreement with the view expressed by the learned trial Judge, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned trial Judge for acquittal and in our view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned trial judge and this is so, in view of the decision rendered by the Supreme Court in the case of Girija Nandini Devi and others v. Bijendra Narain Chaudhari, AIR 1967 SC 1124 and State of Karnataka v. Hema Reddy and another, AIR 1981 SC 1417. On over all appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned trial Judge for acquitting the respondents/accused. Suffice it to say that the learned trial Judge has given cogent and convincing reasons for acquitting the respondents/ accused and the learned APP has failed to dislodge the reasons given by the learned trial Judge and convince this Court to take a view contrary to the one taken by the learned trial Judge. Therefore, there is no merit in this acquittal appeal.

10. For the foregoing reasons, there is no substance in this acquittal appeal filed by the State and as it being meritless deserves to be dismissed and accordingly it is dismissed. The respondents are on bail. Therefore, their bail bonds shall stand cancelled and sureties are discharged.

(M.C. Patel, J.)

(A.M. Kapadia, J.)

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